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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

BRADLEY B., Petitioner, v. THE SUPERIOR COURT OF KERN COUNTY, Respondent, KERN COUNTY DEPARTMENT OF HUMAN SERVICES, Real Party In Interest.	F040909 (Super. Ct. Nos. JD095432 & JD09434) **O P I N I O N**

THE COURT*

ORIGINAL PROCEEDINGS; petition for extraordinary writ review. Michael G. Bush, Judge.

Michelle R. Trujillo, for Petitioner.

No appearance for Respondent.

B.C. Barmann, Sr., County Counsel, and Mark L. Nations, Deputy County Counsel, for Real Party In Interest.

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*Before Dibiaso, Acting P.J., Cornell, J., and Gomes, J.

Petitioner Bradley B. seeks extraordinary writ review (Welf. & Inst. Code,[1] §366.26, subd. (*l*); Cal. Rules of Court, rule 39.1B) of respondent court's order that a section 366.26 hearing be held on October 11, 2002, as to his sons Bradley and Aaron. He contends the court erred in denying him visitation. We will affirm the judgment.

STATEMENT OF THE CASE AND FACTS

Petitioner has a history of assaultive behavior perpetrated against Martha, the mother of his sons, Aaron and Bradley. In October 2001, approximately two months after Bradley's birth, petitioner brutally attacked Martha in Aaron's presence. He hit her in the head behind the right ear and kicked her in the vagina with such force that she fell to the floor and began to vomit.

On October 21, 2001, petitioner broke into the family home and physically attacked Martha again in front of the boys. He punched her in the mouth and choked her, warning "I'm gonna kill you, you fucking bitch." Martha passed out for a few seconds. Petitioner left the residence, adding "You're gonna pay bitch, bye." On October 22, 2001, a warrant was issued for petitioner's arrest.

The Kern County Department of Human Services (department) took then nine-year-old Aaron and two-month-old Bradley into protective custody. Aaron stated he had seen numerous violent acts perpetrated against his mother by petitioner, including the attack on his mother after Bradley's birth. Petitioner's assaultive behavior caused him to fear for their safety. Aaron stayed home from school to keep a watch for petitioner and he slept with a baseball bat. Further investigation revealed that petitioner and Martha have extensive criminal histories involving substance abuse.

On October 25, 2002, the department filed dependency petitions alleging, as to petitioner, the children were at risk of harm because of his substance abuse and domestic

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[1] All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

violence. (§ 300, subd. (b).) At the time, petitioner's whereabouts were unknown and he was listed as an alleged father. The court detained the children and placed them with their maternal aunt and uncle. Petitioner was subsequently arrested, convicted of corporal injury on a spouse (Pen. Code, § 273.5, subd. (a)) and sentenced to four years in prison. At the contested jurisdictional hearing on December 14, 2001, the court sustained the allegations Aaron and Bradley suffered serious physical harm as a result of petitioner's domestic violence. The court found the allegations concerning his substance abuse not true.

On January 15, 2002, the court entered a judgement of paternity as to both boys and elevated petitioner's status to presumed father. In a supplemental dispositional report, the department recommended the court not offer petitioner reunification services or allow visitation. The department cited Bradley's young age and inability to bond with petitioner and Aaron's fear of petitioner.

At the dispositional hearing on February 6, 2002, the court ordered reunification services for Martha, but only contact through screened letters for petitioner. In its six-month review report, the department reported petitioner had not provided any letters to the case worker.

At the six-month review hearing on June 16, 2002, the court terminated reunification services for Martha for failure to comply with her case plan and set the matter for a section 366.26 hearing. Petitioner informed the court he could have contact visits in prison and argued he should be able to visit with his sons. The court denied petitioner's request, finding petitioner failed to establish good cause to change the prior visitation order. This petition ensued.

DISCUSSION

Petitioner argues the court erred in denying his request for visitation. He claims he should be allowed visitation so he can preserve the adoption exception under section

366.26, subdivision (c)(1)(A). He further argues the setting of the section 366.26 hearing constituted good cause to modify the prior visitation order. We disagree.

Petitioner's request for contact visitation at the six-month review hearing was, in essence, an oral motion pursuant to section 388 to modify the court's prior "letter only" visitation order. Section 388 permits a parent to petition the court for a hearing to change, modify, or set aside a previous order based on changed circumstances or new evidence. The parent bears the burden of demonstrating the changed circumstances exist and that the proposed change is in the best interest of the child. (*In Re Michael B*. (1992) 8 Cal.App.4th 1698, 1703.) We review the juvenile court's denial of a section 388 motion for abuse of discretion. (*In re Casey D*. (1999) 70 Cal.App.4th 38, 47.)

In this case, the basis for petitioner's request for visitation was that he had acquired the right to have contact visitation in prison. However, there was no indication it would be in the best interest of the children. He was incarcerated within several months of Bradley's birth, thereby precluding any parent/child bond and Aaron was profoundly afraid of him. Moreover, petitioner did not take advantage of his ability to correspond with Aaron while he was in prison. It could not possibly be in the best interests of these boys to be exposed to the prison setting to visit someone they either did not know or feared. We find no error.

DISPOSITION

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.